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COMMITTEE AGAINST TORTURE

Twenty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 439th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 13 November 2000, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.439/Add.1.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.00-45756 (E)

The meeting was called to order at 10.05 a.m.

STATEMENT BY THE REPRESENTATIVE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

1. Mr. GAHAM (Representative of the High Commissioner for Human Rights) welcomed the members of the Committee against Torture on behalf of the High Commissioner for Human Rights, who had not been able to attend owing to her current mission in Palestine.

2. He was glad to announce that in September, Comoros, Guinea-Bissau and Sao Tomé and Principe had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, Botswana, Gabon, Ghana and Lebanon had ratified or acceded to the Convention, while Ghana had also made the declaration under article 22 recognizing the Committee's competence to receive individual communications. It was worth noting that out of the seven countries mentioned, six were from the African region.

3. Universal ratification was one of the main objectives of the Office of the High Commissioner for Human Rights. As that implied a heavier workload for both the Committee and the Secretariat, the High Commissioner had called for a strengthening of the treaty monitoring system. One of the first steps to that end was the establishment of a Petitions Unit to examine individual complaints received by the Committee against Torture, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. The Petitions Unit was to be operational as from the beginning of December; its staff had already been recruited, and the person who would head the Unit would be appointed as soon as Ms. Robinson returned. The aim was to enhance the flow of information between the various treaty bodies with regard to jurisprudence and to provide the Committees with a more proactive and legally specialized support than had previously been possible, while working in close cooperation with the Committee on the Elimination of Discrimination against Women.

4. The High Commissioner for Human Rights hoped that additional steps could be taken in the near future to continue to respond to the needs of the treaty-monitoring bodies, including with respect to follow-up procedures. She also attached great importance to the interlinkage and indivisibility of rights and welcomed the tendency towards increased sharing of expertise and cooperation between the treaty-monitoring bodies. One example of that was the discussion on State violence against children that had taken place in September in the Committee on the Rights of the Child, which had shown the overriding importance of coordinating the activities of institutions, existing mechanisms and partners.

5. The High Commissioner was following with interest the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. She was aware of existing time constraints, but looked forward to hearing the Committee's views on how it could contribute to the success of that event.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CAT/C/57)

6. The provisional agenda (CAT/C/57) was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

7. The CHAIRMAN said that Mr. Silva Henriques Gaspar had attended a meeting relating to the rights of the child, and he asked him to report on it at a future time.

8. He asked Mr. Yakovlev to prepare a draft statement on the World Conference against Racism for the Committee for consideration and perhaps adoption later in the session.

9. The recommendation and explanation contained in the communication from the Permanent Representative of Australia, dated 11 September 2000, in which Australia proposed ways of reforming the methods of the human rights reporting bodies, should be included in the programme of work. The Committee's views on that statement should be consistent; they should be made known to the Office of the High Commissioner, and the Committee should even be prepared to adopt some of those proposals.

10. He would report on the twelfth meeting of chairpersons and refer to the Committee a number of matters requiring its attention.

11. There had been a request on the question of HIV/AIDS rights, which he thought should also be placed on the Committee's programme of work.

12. He asked Mr. Camara to report on preparing a general comment on interim measures under article 22, and the Committee would also continue its discussion on the creation of a pre-sessional working group.

13. Mr. BRUNI (Secretary of the Committee) suggested that it would be wise to hold the Committee's press conference in the Palais des Nations, where it would attract more attention.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3)

14. Mr. BRUNI (Secretary of the Committee) said that, of the 118 initial reports that had been expected between June 1988 and October 2000, 77 had been submitted and 38 were overdue. Of the 90 second periodic reports expected between June 1992 and October 2000, 52 had been submitted, and 38 were overdue. Of the 60 third periodic reports requested for the period between June 1996 and October 2000, 29 had been submitted, and 31 were overdue. Of the 26 fourth periodic reports requested in 2000, four had been submitted.

15. Reports to be considered by the Committee at one of the two sessions in 2001 had been submitted by Bolivia, Brazil, Costa Rica, the Czech Republic, Denmark, Georgia, Greece, Kazakhstan, Luxembourg, Norway, Slovakia, Sweden, Ukraine and Venezuela.

16. In October 1999, China had sent additional information replying to a number of questions asked by the Committee about Hong Kong during consideration of its third periodic report in May 1999. That information had been forwarded to the country rapporteur and alternate country rapporteur for China.

17. Mr. MAVROMMATIS said that since past measures taken with regard to overdue submission of reports had not produced any results, the Committee needed to give the matter closer consideration.

18. The CHAIRMAN said that Ms. Gaer would report to the Committee on new developments relating to gender and torture.

The public part of the meeting rose at 10.40 a.m.

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COMMITTEE AGAINST TORTURE

Twenty-fifth session

SUMMARY RECORD OF THE 440th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 14 November 2000, at 10 a.m.

Chairman: Mr. BURNS

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic report of Armenia

ORGANIZATIONAL AND OTHER MATTERS (continued)

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GE.00-45799 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Second periodic report of Armenia (CAT/C/43/Add.1; HRI/CORE/1/Add.57)

1. At the invitation of the Chairman, the delegation of Armenia took places at the Committee table.

2. The CHAIRMAN invited the delegation to address the Committee.

3. Mr. NAZARIAN (Armenia) said that the Armenian authorities were fully aware of the importance of the reporting procedure, which provided them with the opportunity to hear expert views on Armenia's compliance with the Convention since its ratification by the National Assembly in 1993. The Government viewed the Convention as a powerful tool for the promotion of social cohesion and genuine democracy and was keen to develop effective mechanisms and strategies for its full implementation. His delegation looked forward to a fruitful exchange of views with the Committee.

4. Mr. CAMARA (Country Rapporteur) said that he had only a limited number of questions to raise with the delegation because the second periodic report (CAT/C/43/Add.3) focused on plans for the future and contained little information about the present situation in Armenia.

5. The definition of torture set forth in article 1 of the Convention had not yet been incorporated in Armenian domestic legislation. The Constitution contained a general prohibition of torture but the criminal offence and the penalties it entailed were not described in detail in the legislation. He wished to know why Armenia had failed to remedy that shortcoming despite the Committee's recommendation in its concluding comments on the initial report.

6. According to article 62 of the Code of Criminal Procedure, a person could be held in police custody for up to 96 hours. Given that most cases of torture occurred during the initial period of detention, he suggested that compliance with article 2, which required States parties to take effective legislative, administrative and judicial measures to prevent acts of torture, might require a reduction in the maximum period of police custody. He asked whether the authority responsible for ensuring compliance with the time limit was a judicial or administrative body and whether any remedy existed in cases where the 96-hour deadline was exceeded. What was the difference between police custody and the "preventive measures" referred to in paragraph 73?

7. According to paragraph 29 of the report, the Armenian Parliament had adopted a decision on 27 September 1993 to give the Procurator-General the right to sign extradition agreements with the procurators of other States. Had any such agreements been concluded and, if so, were they drafted in such a way as to enforce the prohibition in article 3 of the Convention of extradition to a State where there were substantial grounds for believing that a person would run the risk of being tortured?

8. According to information transmitted by the State Department of the United States of America, groups of Armenian human rights defenders had reported five cases of death due to assault and torture during detention in 1999. And according to the non-governmental organization (NGO) Human Rights Watch, in the rare cases where complaints filed against the police had given rise to prosecution, the defendants had been convicted of abuse of office under provisions of the Criminal Code whose content was vague and unrelated to the gravity of the offences committed. He invited the delegation to comment on the allegations contained in the two reports.

9. With regard to article 5 of the Convention, he requested additional information concerning the legislation governing offences committed outside Armenian territory and the jurisdiction of the domestic courts in that regard.

10. Mr. YAKOVLEV (Alternate Country Rapporteur) joined Mr. Camara in emphasizing the importance of the initial period of criminal investigation, during which a person was deprived of his or her liberty on suspicion alone and was in a particularly vulnerable position because public officials were sometimes tempted to exert pressure, including torture, to extract a confession. He requested further information about existing safeguards in Armenia to protect the inalienable rights of persons taken into custody.

11. Incommunicado detention was unacceptable. He understood that, while Armenian legislation permitted arrested persons to have contact with legal counsel and family members during the preliminary investigation, they were often prevented from exercising that right in practice. He wished to know what safeguards and remedies existed in such cases.

12. Under Armenian legislation, a confession obtained through torture was inadmissible. He asked whether the same rule applied to evidence obtained under duress. Had there been any case in practice where a lower court decision based on a confession obtained through torture had been set aside on appeal and the defendant acquitted?

13. Paragraph 71 of the report referred to training courses for the staff of law enforcement agencies that focused on the inadmissibility of torture. He asked whether there were similar courses for the medical and paramedical staff employed in places of detention, who must be able to detect cases of physical and mental torture and report them to the proper authorities.

14. He would appreciate information concerning specific cases in which complaints by tortured persons had been considered by the courts and appropriate action taken. Clearly, Armenia was not a State in which torture was widely practised, but the Committee was interested in hearing what practical action had been taken in individual cases and, above all, whether the perpetrators had been punished. He also wished to know whether programmes to rehabilitate and compensate torture victims and their families existed in Armenia. Could a person sue for compensation in the civil courts?

15. Mr. MAVROMMATIS said he had the general impression that Armenia, despite difficulties inherited from the previous regime and the ongoing dispute with its neighbours, was genuinely striving to improve human rights and the lot of its people.

16. The second periodic report was somewhat disappointing and lacking in detail. Armenia seemed to be trying to comply with its international obligations under the Convention by giving an unduly wide interpretation to general provisions. He would have welcomed an introductory statement updating the information in the report, letting the Committee know, for instance, whether the new Criminal Code had been adopted.

17. Only four lines of the report had been devoted to article 16 concerning cruel, inhuman or degrading treatment or punishment, an article that covered, for example, prison conditions and the method used to execute the death penalty. While he welcomed the statement in paragraph 5 that the death penalty, until such time as it was abolished, could be prescribed by law only for particularly heinous crimes, he would have expected a moratorium on capital punishment under the circumstances. What were the heinous crimes for which the death penalty might still be imposed and what was the method of execution? Were there any statistics about executions in recent years?

18. He pointed out that Armenia's core document (HRI/CORE/1/Add.57) needed a thorough update, particularly since Armenia had a new Constitution. Information should be included on, inter alia, Armenia's mechanisms for the protection of human rights.

19. Referring to paragraph 10 of the report, he wondered what rank the Convention had. If international treaties were incorporated into Armenia's legal system upon ratification, that would mean that, given that the Criminal Code did not define torture, the courts should apply the definition used in the Convention. Had there been cases where that had occurred?

20. He requested clarification of the phrases "the use of force by a judge" (para. 43) and "to make a knowingly unjust ruling" (para. 44). He pointed out that an independent judiciary, and mechanisms to safeguard that independence, were a sine qua non for meeting international obligations.

21 Referring to paragraphs 64 and 65, he asked whether Armenia would let the perpetrator go unpunished if the law provided for only six months' imprisonment for torture; or would it apply universal jurisdiction and try the person itself?

22. The provisions governing the use of force by the security forces appeared to be quite good (para. 78). They could well be supplemented, however, by a provision that, before lethal force was applied, non-lethal methods must be exhausted, including the use of non-lethal force.

23. Referring to paragraph 71 of the report, Mr. RASMUSSEN asked whether the training for law enforcement personnel in human rights issues specifically covered the prohibition against torture; he would like further details concerning the course mentioned in that paragraph.

24. He requested a description of the various places of detention and the maximum time a person could be held in each. How long could a person be held by the police, for example: was it for seven days, as mentioned in paragraph 73? Could a person be held longer in some other institution before being transferred to pre-trial detention?

25. When torture took place, it was usually during the initial detention period, and it was therefore extremely important to provide safeguards at that stage in the form of access to a lawyer and a doctor, and to family members. Were people informed of those three rights at the time of their arrest? Was that information provided in writing?

26. Following up Mr. Mavrommatis's question on inhuman and degrading treatment, he asked for information regarding conditions in Armenia's prisons: was there a problem of overcrowding in unventilated spaces with no access to natural light, for example, or with tuberculosis infection, which was a major problem in certain neighbouring countries? He also wondered what provision there was for inspection of prison facilities.

27. Lastly, he said a fundamental question was what provision was made for asylum-seekers and refugees: were they kept separate from criminals?

28. Ms. GAER said the report did not address the recommendations and conclusions made by the Committee after its consideration of Armenia's initial report. She found that hard to understand, as the Committee offered its comments with a view to facilitating constructive dialogue with States parties.

29. One of the difficulties Armenia had had to face recently was the absorption of a large refugee population. Many of the refugees had suffered grievous trauma, including torture, according to information received from NGOs. Clearly the Armenian Government was not responsible for that, but the Committee would be grateful for information on what provision the Government made for reparation and rehabilitation for such people, and under what auspices. Conversely, what specific reparation and rehabilitation was offered to Armenians who had been found to have suffered ill-treatment in Armenian prisons?

30. Women's and mothers' groups and human rights organizations had reported on the practice of "hazing" in the military, which sometimes resulted in death or, allegedly, suicide. She understood that the Ministry of Defence had issued strict instructions to curtail the practice. The President had met with mothers' groups and pledged greater efforts to combat it; the military Procurator had promised to review many closed cases, and as many as 80 officers had been prosecuted. NGOs estimated that some 200 cases had been reported each year during the last five years. The expression "driving a person to suicide", used in the report (para. 99), seemed an unusual way to describe a pattern of physical violence, assault and harassment, and she would welcome some information on recent progress on the issue and regarding the current situation.

31. According to NGOs, there were other cases that fell into the category of torture or ill-treatment yet were not investigated impartially. That led to an atmosphere of impunity towards abusive officers. She asked how the right to lodge a complaint was promoted, what investigations had in fact been conducted and their outcome, and what responsibility the authorities had.

32. With regard to treatment of prisoners, she wondered whether sexual violence in prisons was monitored; if so, what were the results of that monitoring? It would be useful to know the number of complaints disaggregated by gender. Were female prisoners guarded by male or

female warders? Were female prisoners convicted of less violent crimes held with female prisoners convicted of more violent crimes? In general, the report lacked statistical detail in a matter that concerned a prison population of 68,000.

33. Lastly, she asked whether her understanding was correct that during states of emergency in Armenia, the right to freedom from torture was not regarded as a non-derogable right.

34. The CHAIRMAN said the administrative detention regime was of particular concern to the Committee, because at least one NGO had described incidents occurring during administrative detention in Armenia that were, to say the least, mysterious. It was important to establish whether the oversight mechanisms were what was to be expected of a State that had ratified a human rights instrument. He would therefore like to know what administrative detention was, when it could be exercised and for what period, by whom and under what conditions? During administrative detention, did the detainee have the right of access to family members, a lawyer and a doctor? What safeguards existed to prevent torture occurring during the first 24 hours of such detention, which was the most likely time for it to occur?

35. With regard to amnesty, he said the issue was not peculiar to Armenia, but Armenia did apply amnesty quite frequently. Clearly, in a case where a person could reasonably be suspected of the crime of torture, it would be a breach of the Convention to grant an amnesty. He assumed that Armenia would not extend amnesty to persons who were guilty of torture as defined by the Convention.

36. The report did not give any data regarding prosecutions of people committing torture. He asked whether the delegation might be able to provide some information on that subject.

37. He asked whether women detainees were held in special prisons and what training the officers responsible were given. What medical regime was available for women prisoners?

38. It was worthy of note that, although the death penalty was formally in force in Armenia, it had not been exercised since independence; and that, despite the large numbers of refugees that had entered the country in recent years, even unsuccessful asylum-seekers were not forcibly expelled.

39. With regard to the compensation and rehabilitation given to victims of police or State brutality, it was not clear in the report whether suit could be brought against the State itself or whether the judge who convicted and sentenced a torturer was also able to award compensation to the victim; he would appreciate clarification on that point. How were compensation and rehabilitation provided in Armenia? Was the mechanism effective?

40. Mr. CAMARA requested clarification on paragraphs 83 and 84 of the report, which dealt jointly with articles 12 and 13 of the Convention. He pointed out that whereas article 12 obliged States parties to take spontaneous action to make inquiries whenever there were allegations of torture, article 13 covered impartial and immediate inquiries in cases of complaint. Those were different issues and should be dealt with separately. What happened in practice? Was the State in fact obliged to investigate cases immediately?

41. Mr. NAZARIAN (Armenia) said the delegation would prefer to reply at a later meeting, which would give them the opportunity to research the answers and be as accurate as possible.

42. The delegation of Armenia withdrew.

The meeting was suspended at 11.10 a.m. and resumed at 11.30 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

43. The CHAIRMAN asked Ms. Gaer, the Rapporteur on torture and gender issues, to update the Committee on recent developments.

44. Ms. GAER noted that vulnerable groups were of particular concern to the Committee, which had led the Chairman to appoint three thematic Rapporteurs on the issues of children, discrimination and gender, as related to torture.

45. The previous six or seven months had seen many developments in the area of gender-related torture and ill-treatment. The United Nations Human Rights Committee, for instance, had recently commented significantly on article 3 of the Covenant on Civil and Political Rights, which addressed equality between men and women. Women were considered particularly vulnerable during internal or armed conflicts, and the Human Rights Committee had identified the State's obligation to protect women from rape, abductions and other forms of gender-based violence, which could constitute torture under the Convention. That Committee had noted what conditions and issues should be reported by States under articles 7 and 10 of the Covenant with regard to national law and practice regarding domestic violence and violence against women, including rape. It had also inquired into State efforts to prevent forced abortions or sterilization, and regularly sought information on the treatment of detained persons deprived of their liberty on such questions as whether men and women were separated in prisons, whether women were guarded by female warders, whether juveniles were separated from adults, whether men and women enjoyed equal access to the courts and whether their testimony was of equal value.

46. Enough States had ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and it would come into force in December 2000. Modelled on the Convention against Torture, the Protocol would permit individual communications on violence and torture and would include complaints and inquiry procedures.

47. The International Criminal Court, following a preparatory meeting in June, had produced results of great significance for the work of the Committee. In its definition of the elements of the crimes of genocide, crimes against humanity and war crimes, it had clearly addressed the issue of torture in addition to other crimes such as rape, sexual slavery, enforced prostitution, forced pregnancy and sexual violence. It had defined the elements with care, making it clear that they might all constitute torture or ill-treatment in certain circumstances, which brought them within the scope of the Committee's mandate.

48. Beijing +5 had not only reaffirmed the results of the Platform for Action, but had added significantly to the prohibitions and had defined issues related to violence against women and the punishment of perpetrators. It had, for the first time, issued a statement addressing so-called "honour crimes", together with acid attacks and dowry-related violence and death. Gender-based persecution had also been recognized as constituting grounds for asylum.

49. The fifty-fifth session of the General Assembly, in adopting a resolution on the elimination of crimes against women committed in the name of honour, had asked that so-called "crimes of honour", which United Nations Secretary-General Kofi Annan had characterized as "crimes of shame", be strongly condemned. It had focused on the need to bring the perpetrators to account, calling on States to intensify efforts to eliminate such crimes. It particularly called on "relevant treaty bodies" to "address the issue where appropriate", opening the way for treaty bodies which considered themselves relevant to become involved.

50. The Security Council had, for the first time in its history, held a debate and adopted a resolution on women in armed conflict. Like the Human Rights Committee, it had concluded that women and children were increasingly being targeted by combatants in armed conflicts. The Secretary-General had been called upon to study the special needs with regard to the human rights of women in armed conflict and the impact of such conflicts on women and girls, and to give guidelines for their protection. In some instances obligations under the Convention would be involved, so that the Committee might wish to offer advice. The resolution addressed the responsibility of States to end impunity and to punish genocide, war crimes and crimes against humanity, with emphasis on the Security Council's competence to address sexual violence against women.

51. Regional bodies on human rights and national bodies had also addressed gender issues in key decisions based on the Convention.

52. The CHAIRMAN invited Ms. Gaer to expand on her preliminary findings at the Committee's next session. He called upon Mr. Gaspar to report on the meeting of the Committee on the Rights of the Child dealing particularly with State violence against children.

53. Mr. GASPAR said that he had had the opportunity to highlight the possibility of ensuring greater effectiveness for the rights for the child through the mechanisms of the Convention on Torture. He had underlined its role with particular regard to articles 3, 19, 37 and 39 of the Convention on the Rights of the Child, where it provided additional protection. The areas of overlap involved internment in official institutions, forced displacement outside the family and repressive procedures against children, all of which could be evaluated within the framework of the Convention against Torture. Specific issues of interest were the conditions in which children were detained, for instance, whether they were separated from adults, the use of force by individuals in a position of responsibility within institutions, and the physical or psychological ill-treatment of children. Those conditions fell under article 16 of the Convention, and could be the object of a communication under article 22. He had brought the procedure to the attention of the members of the Committee on the Rights of the Child, not all of whom had been familiar with it.

54. Furthermore, the requirements of articles 10, 12, 13 and 14 of the Convention could be applied to situations where children or juveniles were kept in institutions, and particularly to detention. He had taken it upon himself to assure the Committee on the Rights of the Child that the Committee against Torture, under article 19 (country reports), would look specifically at the rights of children, with particular attention to the problems of internment, health, etc., which fell within the sphere of competence of the Committee.

55. The CHAIRMAN confirmed that the Committee would follow up the assurance given to look closely at the standards and conditions of detention relating to juveniles.

The meeting rose at 11.51 a.m.